

Use of Force - Non-Patients

301.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force during incidents not involving a patient who has been committed to the Department of State Hospitals (DSH). While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, all Office of Protective Services (OPS) employees are expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

For policy guidelines on the use of force during incidents involving a patient who has been committed to DSH, please see the Use of Force - Patients Policy.

301.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly Force - 1) Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm. 2) A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed. 3) “Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force. (Pen. Code § 835a).

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.

Reasonable Force - The degree of force which a similarly trained and experienced officer, on scene with similar facts and circumstances, without the benefit of hindsight, would deem reasonably necessary to effect an arrest, prevent escape or overcome resistance in order to protect themselves, a patient, DSH employee, visitors or the public.

Excessive Force - Use of more force than is objectively reasonable to accomplish a lawful purpose.

Imminent Threat - Any situation or circumstance that jeopardizes the safety of persons or compromises the security of the institution, requiring immediate action to stop the threat. Imminent does not mean immediate or instantaneous. An imminent threat may exist even if harm has not yet occurred.

Imminent Threat of Death- Serious harm through the actions or words of another person.

Serious Bodily Injury - Serious bodily injury means a serious impairment of physical condition, including, but not limited to loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring suturing or disfigurement.

Totality of Circumstances- All facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.

301.2 POLICY

It is the policy of DSH, to accomplish its law enforcement duties with reasonable reliance on the use of force. The use of force by officers is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for their authority, responsibilities and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

DSH recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

301.2.1 DUTY TO INTERCEDE

Any officer present and observing another officer using force that he or she perceives to be beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor immediately after the incident has stabilized.

301.2.2 RESPONSIBILITY

It is the responsibility of all DSH employees to understand and comply with the Use of Force policies, related procedures, ongoing training and applicable law.

It is the responsibility of the Executive Director:

- (a) To ensure that all OPS employees receive appropriate training annually and understand the Use of Force policies and procedures, including both the application of force and subsequent reporting and documentation requirements.
- (b) To record and track all training, corrective action and discipline related to the use of force.

301.3 USE OF FORCE

Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by OPS. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

301.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer who has reasonable cause to believe that the person being arrested committed a public offense may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. (Pen. Code, § 835, subd. (a).)

301.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs and/or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances.

301.3.3 FORCE OPTIONS

Officers are deployed with safety equipment including, but not limited to Oleoresin Capsicum (OC) spray, a baton and handcuffs. Officers must receive initial and ongoing instruction by a certified instructor in the use of this equipment. Prior to deployment, all officers shall receive the standardized in-service training module, on "Law Enforcement Intervention." Included in the curriculum shall be a copy of this policy, which shall be covered in detail during the course of instruction. Each hospital shall provide instruction to non-officers regarding the effects of OC spray and the decontamination process for individuals and areas.

All officers have a number of force options available for use in situations where force is reasonably necessary. Those situations can include but are not limited to:

- (a) Subduing or arresting a physically threatening or assaultive person.

- (b) Instances that threaten the safety of an officer or other person.
- (c) Stopping a person who is attempting to flee or escape a lawful detention or arrest.
- (d) When directing, controlling or escorting resistive or physically uncooperative persons. Force options are strictly limited to officers. Force options include, but are not limited to:

- (a) Voice commands
- (b) Chemical agents/OC spray authorized by the Chief of Police
- (c) Physical contact/control holds/takedowns
- (d) Carotid control hold (only in deadly force situations)
- (e) Impact weapons authorized by the Chief of Police
- (f) Firearms authorized within the Firearms Policy

301.3.4 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the officer.
- (c) Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

301.3.5 CAROTID CONTROL HOLD

The carotid control hold may only be used in situations where the use of deadly force is appropriate, and at no other time. Due to the potential for injury or death, the use of the carotid control hold is subject to the following:

- (a) The officer shall have successfully completed DSH-approved training in the use and application of the carotid control hold.
- (b) The carotid control hold may only be used when circumstances perceived by the officer at the time indicate that such application reasonably appears necessary to protect human life or prevent serious bodily injury.
- (c) The application of a carotid control hold on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of applying a carotid control hold:
 - (a) Females who are known to be pregnant
 - (b) Elderly individuals
 - (c) Obvious juveniles
 - (d) Individuals who appear to have Down Syndrome or who appear to have obvious neck deformities or malformations, or visible neck injuries

- (d) Any individual who has had the carotid control hold applied, regardless of whether he/ she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until examined by paramedics or other appropriate medical personnel.
- (e) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the subject lost consciousness as a result.
- (f) Any officer attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.
- (g) The use or attempted use of the carotid control hold shall be thoroughly documented by the officer in any related reports.

301.3.6 USE OF FORCE TO SEIZE EVIDENCE

In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by DSH for this specific purpose.

301.3.7 OTHER NECK RESTRAINTS

The use of any neck restraint hold that restricts an individual's airway is prohibited, unless a situation arises where the use of deadly force is permissible under existing law and OPS policy.

301.3.8 OC SPRAY AND BATON USAGE

OC spray and/or the baton may only be used in a situation that presents imminent physical harm to others.

301.4 DEADLY FORCE APPLICATIONS

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Pen. Code § 835a):

- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.

- (b) An officer may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Officers shall not use deadly force against a person based on the danger that person poses to him/ herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Pen. Code § 835a).

An “imminent” threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Pen. Code § 835a).

301.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Officers shall move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer shall only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

An officers shall not shoot at any part of a vehicle in an attempt to disable the vehicle.

301.5 REPORTING THE USE OF FORCE

Any use of force by an employee of OPS shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer shall articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, OPS may require the completion of additional report forms, as specified in OPS policy, procedure or law.

301.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a restraint device other than handcuffs, shackles or belly chains.
- (f) The individual subjected to the force was rendered unconscious.
- (g) An individual was struck or kicked.
- (h) Any person alleges any of the above has occurred.
- (i) Any time a firearm is drawn or used, other than in a training environment.

301.5.2 DOCUMENTATION

- (a) All use of force incidents shall be documented consistent with standard operating procedures.
- (b) The Chief of Police is responsible for ensuring that documentation and the resulting investigation are strictly scrutinized for purposes of accuracy and completeness, to include a description of the attendant circumstances, review of witness statements and recordation of evidence.
- (c) If there are injuries to the officer, the individual who is the subject of the intervention or any other individual(s) involved that are caused by the use of force, photographs shall be taken of these injuries, as well as of any pre-existing injuries, and all photographs shall be filed as evidence with the investigative report. Photographs of any property damage shall also be taken and filed.

301.5.3 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

The Records Manager or the authorized designee shall ensure that data required by the Department of Justice (DOJ) regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is collected and forwarded to the DOJ as required by Government Code section 12525.2.

301.5.4 USE OF FORCE REVIEW BOARDS - NON-PATIENT

For use of force incidents resulting in serious injury or death of a non-patient, refer to the Use of Force Review Boards - Non-Patient Policy.

301.6 MEDICAL CONSIDERATION

Medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics,

hospital staff or medical staff at the hospital, or treatment at an outside medical facility. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor, or if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain, sometimes called “excited delirium”, or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

301.7 SUPERVISOR RESPONSIBILITY

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

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- (a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
 - (b) Ensure that any injured parties are examined and treated.
 - (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/ her Miranda rights, the following shall apply:
 - 1. The content of the interview should not be summarized or included in any related criminal charges.
 - 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
 - (d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
 - (e) Identify any witnesses not already included in related reports.
 - (f) Review and approve all related reports.
 - (g) Determine if there is any indication that the subject may pursue civil litigation.
 - (a) If there is an indication of potential civil litigation, the supervisor should alert the Chief of Police.
 - (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.
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In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

301.7.1 CHIEF OF POLICE RESPONSIBILITY

The Chief of Police shall review each use of force by any OPS employee within his/her command to ensure compliance with this policy and to address any training issues.

301.8 TRAINING

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

301.9 HOSPITAL LAW ENFORCEMENT PROCEDURES

Each state hospital shall develop procedures to guide the planning, implementation and assessment of law enforcement intervention consistent with the provisions stated herein.

301.9.1 USE OF FORCE ANALYSIS

At least annually, the Operations Lieutenant, or other supervisor designated by the Chief of Police, should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police. The report should not contain the names of officers, suspects or case numbers, and should include:

- (a) The identification of any trends in the use of force by employees.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.